

## COMMONWEALTH OF MASSACHUSETTS

Order Instituting Rulemaking to Establish Complaint and  
Enforcement Procedures to Ensure That Telecommunications D.T.E. 98-36  
Carriers and Cable System Operators Have Non-Discriminatory  
Access to Utility Poles, Ducts, Conduits, and Rights-of-Way.

CSC Holdings, Inc. ("Cablevision") files these comments in support of the Department's efforts to ensure that cable operators and competitive local exchange carriers ("CLECs") have nondiscriminatory access to utility poles, ducts, conduits, and rights of way.

The proposed additions to 220 C.M.R. 45.00 et seq. recognize that unreasonable terms and conditions imposed by utilities can prevent nondiscriminatory access to bottleneck facilities. The development of facilities-based competition in telecommunications is one of the central goals of the Telecommunications Act of 1996 ("the Act"). The Department, as well as federal law, establish that poles, conduits, and rights-of-way are an essential facility for the development of such competition. *E.g.*, 47 U.S.C. " 224; *Cablevision of Boston, Inc.*, D.P.U./D.T.E. 97-82 (April 15, 1998); *Greater Media*, D.P.U. 91-218 (1992). Without the assurance that Massachusetts utilities will be held to their obligation to provide cable operators and competitive telecommunications providers with nondiscriminatory access to these ratepayer-owned facilities in a meaningful way, new entrants may be deterred from making the investment required for facilities-based competition.

The issue of access to these essential facilities is especially important as electric utilities move into new markets that include telecommunications. Boston Edison is merely a forerunner. It is not difficult to imagine that in the near future the great majority of Massachusetts citizens will take electrical service from a utility with a telecommunications affiliate. Indeed, if Boston Energy's announced acquisition of COM/Energy is approved, Cambridge Electric Light Company and Commonwealth Electric Company will become just such utilities.

This proceeding offers the DTE an opportunity to adopt generally applicable rules that will allow utility entry into new markets, but guard against incentives to deter competitors or prefer utility affiliates. *Cf. Marcus Cable Associates, L.P. v. Texas Utilities Electric Company*, DA 97-1527 at 10(July 18, 1997)(where utility pole attachment agreement required written notice of cable operator's provision of nonvideo services and release from liability by nonvideo customers in favor of utility, utility's "own involvement in the provision of telecommunications services also makes suspect

the inclusion of the " Requirements" and "likelihood of direct competition between Marcus and TU Communications magnifies the unreasonableness of the " Requirements")(copy attached).

Cablevision therefore urges the Department to extend its regulations to address nondiscriminatory access to pole and conduits. The proposed regulations clarify the Department's authority in this area. Cablevision joins in advocating the additional measures suggested in the comments of the New England Cable Television Association, Inc. ("NECTA").

### **Conclusion**

This rulemaking is an essential step in meeting the Commonwealth's regulatory obligations under the 1996 Telecommunications Act and insuring nondiscriminatory access to the essential facilities that cable operators and CLECs rely on to provide competitive services to the citizens of the Commonwealth. Cablevision urges the Department to adopt its proposed regulations with NECTA's proposed revisions.

Respectfully submitted,

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